Supreme Court, U.S.
FILED

09-593 OCT 13 2009

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(1)

No:

In the United States Supreme Court

Paul C. Nordberg,

Petitioner

v.

The Ocean Meadows Condominium Association

Respondent

On Petition For A Writ of Certiorari To
The Supreme Judicial Court of the
State of Maine (Sitting as the Law Court)

PETITION FOR WRIT OF CERTIORARI

Paul C. Nordberg – Petitioner ***Pro-se***
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QUESTION PRESENTED

Does the due process provision of the 14th Amendment to the United States Constitution, require that a state court opinion deciding disputed issues of fact, following a bench trial, must identify the evidence relied upon by the state court to reach such findings of fact?

PARTIES TO THIS PROCEEDING

The identity of each party to this proceeding is disclosed in the caption of this litigation.

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Exhibit #1

Copy of the initial decision, dated October 29, 2008 by the Maine District Court (York County) (nine pages)

Exhibit #2

Copy of initial decision on appeal, dated June 23, 2009, as decided by the Maine Supreme Judicial Court (sitting as the Law Court) (two pages)

Exhibit #3

Copy of decision dated July 22, 2009, by the Maine Supreme Court (sitting as the Law Court) denying rehearing/reconsideration of that courts initial decision on appeal (one page)

PETITION FOR A WRIT OF CERTIORARI

Petitioner Paul C. Nordberg respectfully prays that a writ of certiorari be issued to review:

1. The decision of the Maine Supreme Court (sitting as the Law Court), dated June 23, 2009 (*See* Exhibit #2 hereto); AND
2. That court's subsequent denial of rehearing/reconsideration in connection with Petitioner's appeal, dated July 22, 2009, (*See* Exhibit #3 hereto);

The question posed here is simple but important. ***Does the due process provision of the 14th Amendment to the United States Constitution, require that a state court opinion deciding disputed issues of fact, following a bench trial, must identify the evidence relied upon by the state court to reach such findings of fact?***

Petitioner contends that due process requires this, for the simple reason that without it, state courts have the license (as Petitioner contents occurred here) to make findings of "fact" which are without any support whatsoever in the evidence.

The concept of due process mandates that every litigant, and particularly every losing litigant, has a right to be informed as to the substance of why he or she won or lost his or her case. When a state court is permitted to simply pronounce findings as to disputed questions of fact, without any reference to or identification of the evidence putatively supporting such findings, judicial decisions are allowed to flow out of a judicial and intellectual black hole, rather than be the reasoned and articulated conclusions that allow the citizenry to have a modicum of confidence in the integrity and competence of those we entrust to make such decisions.

OPINIONS AND ORDERS BELOW

1, The JUDGMENT (TITLE TO REAL ESTATE INVOLVED), dated October 29, 2008 as entered by Maine Superior Court Justice G. Arthur Brennan (sitting for the District Court) (*See* Exhibit I, hereto - 5 pages in length)

2. The decision dated June 23, 2009 by the Maine Supreme Judicial Court (sitting as the Law Court), affirming the trial court's decision (*See* Exhibit #2, hereto - 1 page in length;) AND

3. The decision dated July 22, 2009 by the Maine Supreme Court (sitting as the Law Court) denying Petitioner's motion for rehearing of the original appellate decision (*See* Exhibit #3, hereto - 1 page in length)

JURISDICTION

This is an appeal from a final decision by the court of last resort of the State of Maine, the Maine Supreme Judicial Court. That decision was rendered on July 22, 2009. This appeal is within the ninety (90) day limit set fort at Rule #13 of this Court.

CONSTITUTIONAL PROVISION INVOLVED

This appeal is based on the 14th Amendment to the United States Constitution.

STATEMENT OF THE CASE

1. This case is a straightforward dispute between a Maine-organized condominium association, the Ocean Meadows Condominium Association ("OMCA"), and the owner of a unit in the condominium development, Paul C. Nordberg ("Mr. Nordberg") concerning condominium fee obligations.

2. The litigation commenced on or about April 6, 2007, when OMCA filed a complaint in the York County (Maine) District Court. The complaint sought:

   A. A money judgment for alleged delinquent condominium fees;

   B. The award of legal fees, etc., related to the law suit; AND

   C. An Order for Foreclosure in the event that Mr. Nordberg failed to pay the allegedly delinquent condominium fees.

3. On June 20, 2007 OMCA filed a Motion for Summary Judgment.

4. On June 26, 2007 Mr. Nordberg and his wife filed responsive pleadings seeking:

   A. An Order of the District Court determining that the Nordbergs owed no delinquent condominium fees; AND

   B. The award of costs and expenses to the Nordbergs from OMCA.[1]

5. The District Court determined that litigation was not amendable to decision by summary judgment.

6. The matter was tried on October 9, 2008 in a bench trial conducted by Maine Superior Court Justice G. Arthur Brennan, sitting as a District Court judge for the purpose of the trial.

7. OMCA sought to prove up its case at trial in a very straightforward manner:

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[1] The Condominium Declaration establishing OMCA establishes a "loser pays legal fees" doctrine in litigation like this between OMCA and individual Unit owner(s).

A. OMCA produce a "STATEMENT," dated September 18, 2008 (only several weeks prior to the trial) which purported the state a liability owed by the Nordbergs to OMCA for delinquent condominium fees; this document was Trial Exhibit A for the Plaintiff; AND

B. OMCA produced two witnesses to testify in support of the contention that the Nordbergs owed delinquent condominium fees:

(I) Michael Mackinnon, President of Mackinnon Property Management, which was then the OMCA property manager.[2] AND

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[2] Mr. Mackinnon testified that he had no knowledge relating to the financial dispute underlying the litigation, because his bookkeeper/accountant, Ms. Jackson, handled all financial records and the like.

(II) Ms. Melissa Jackson, the bookkeeper/accountant for Mackinnon Property Management and the individual who had produced the STATEMENT alluded to above.

8. Mr Nordberg testified and, among other things, produced copies of two checks to OMCA, totaling $4,600 which he argued had been improperly processed by OMCA.

9. On October 29, 2008 Justice Brennan entered his decision in the litigation. Justice Brennan ruled for OMCA. He gave a single, clear rationale for his decision, on the second page of the decision:

> ***"At trial, Ms. Jackson, bookkeeper for Ocean Meadows property management company, whom I find to be both competent and credible, reviewed the history of the Nordbergs' account from 2006 to present. She testified and I find that the Nordbergs are in***

arrears on their Common Expense Assessment in the sum of $757.30."

10. Mr. Nordberg timely filed his appeal before the Maine Supreme Judicial Court, sitting as The Law Court.

11. As Mr. Nordberg stated in his appellate filings, and as was entirely undisputed by OMCA, Justice Brennan's decision was inexplicably based on "evidence" nowhere to be found in the record. Specifically the trial transcript established that:

    A. Despite being asked on several occasions during the trial, including once by Justice Brennan, to offer an opinion as to the amount of any debt which Mr. Nordberg might have owed OMCA, Ms. Jackson steadfastly refused to provide any such testimony; AND

    B. On at least four (4) separate occasions during her testimony, Ms. Jackson explained the reasons for

her inability and refusal to offer any opinion that the STATEMENT which she had been asked to print several weeks earlier (Plaintiffs Exhibit #1 at the trial) was either accurate or reliable.

12. On June 23, 2009 the Maine Supreme Judicial Court, sitting as The Law Court, entered in decision on Mr. Nordberg's appeal. The decision affirmed Justice Brennan's decision after trial. (*See* Exhibit #2, hereto). In that decision, without identifying any evidence in the trial record, The Law Court stated:

> ***"Contrary to the Nordbergs' contentions, the evidence in the record supports the trial court's findings, made after trial, that the Nordbergs were in arrears on common expense assessments...."***

13. Petitioner filed a motion for rehearing and/or reconsideration before the Maine Supreme Court, sitting as The Law

Court. In that motion Petitioner asserted:

A. That Justice Brennan's decision was obviously incorrectly supported, at a minimum, in that it rested on "evidence," (Justice Brennan's recollection to the effect that Ms. Jackson had testified that Mr. Nordbergs owed OMCA delinquent condominium fees) which "evidence" was entirely non-existent[3]; AND

B. In the absence of anyone providing some basis for the Court crediting the STATEMENT (Trial Exhibit #1 before Justice Brennan) as plausibly accurate and/or reliable, OMCA had

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[3] Respondent, OMCA, did not dispute this contention, in any way, in its appellate pleadings.

entered literally no evidence which could be interpreted as constituting a *prima facie* case that the Nordbergs were in any way delinquent on the their condominium fees to OMCA.

Mr. Nordberg asked that the Maine Supreme Judicial Court do either of two things:

A. Simply identify any specific credible evidence which might support a finding to the effect that the Nordbergs owed any delinquent condominium fees; OR

B. Grant rehearing or reconsideration of the appeal.

14. On July 22, 2009 the Maine Supreme Court, sitting as The Law Court, denied

Mr. Nordberg's motion for rehearing and/or reconsideration.

REASONS FOR GRANTING THE PETITION

If justice is to exist in this nation, one thing which the 14th Amendment must mean is that a losing litigant has a right to be lucidly informed by the court why he or she failed to prevail in the matter decided.

When the essence of the dispute in a litigation is a disagreement over the facts, due process must always include the obligation of a court which sits as the fact-finder to identify the evidence which led the court to reach its findings of fact.

Here the Maine Supreme Court, with full knowledge that the trial court judge's stated basis for his crucial finding of fact was non-existent, failed to list in its opinion a single element of evidence in support of a factual determination to the effect that Mr. Nordberg

owed OMCA any money for delinquent condominium fees.

When this deficiency was called to the attention of the Maine Supreme Court, in the motion for rehearing and/or reconsideration, no relief was granted.

The utility of and necessity for this common sense rule, as part of due process in all state court litigation, is amply demonstrated by what occurred in this litigation as the trial court level:

1. The trial court justice somehow became confused and thought he heard testimony which was never given.
2.. In good faith the trial court justice justified his crucial finding-of-fact by referring to the non-existent testimony.
3. This incorrect reference allowed Mr. Nordberg to understand why he lost, and to see and disclose the error by the trial court judge to the Maine Supreme Judicial Court.

Against an undisputed record that the "evidence" relied upon by the trial court was entirely non-existent, an obtuse and unspecific recitation by an appellate court, like the Maine Supreme Judicial Court did here, that there is some completely unspecified and unidentified evidence in the record which supports the trial judge's pivotal finding-of-fact, falls far short of providing Mr. Nordberg anything remotely resembling due process.

Our Constitutions, both federal and the State of Maine's, provide vigorous independence to the judicial branch. This is as it should be; so that the judicial branch can to its best to do justice, even when a decision or decisions may be politically unpopular.

But due process requires that judicial independence be accompanied by judicial transparency. Due process requires that every losing litigant must receive a lucid explanation from the court as to why he or she lost.

While the litigant may not agree with the decision, or the manner in which the court

evaluated either the law or the evidence, which is one reason we have appellate courts, the litigant must have an absolute right to a disclosure by the court of the court's decision making rationale and what the court perceived to be the relevant and credible evidence. Absent a firm and unwavering commitment to this element of due process, the citizenry's confidence that the judicial branch does, indeed, do its best to consider and decide disputes on their merits, will inevitably evaporate.

This court should keep firmly in mind that one risk of every judicial appointment is to bring out the latent character defect of any individual deciding that he or she is "right"... simply because he or she is a judge....rather that because, as a judge, that individual can rationally explain and support his or her judicial decision by a lucid recitation of the relevant law, and if the court is acting as fact-finder, the relevant evidence.

Due process must always include the obligation of every court to explain to the parties, and the public if the public is interested[4], why a judicial decision is reached. This should never be viewed as a burden on the judiciary - because no judge or panel of judges should ever decide a case in the absence of having a coherent rationale for the decision which the court is capable of reducing to words.

In this case the record before the Maine Supreme Judicial Court may be fairly characterized as the that Court having told Mr. Nordberg: *"The reason you lost is very simple - we told you that you lost. We decline to give you enough information so that you may understand WHY we decided you should lose."* That can never be acceptable in a nation where each person appearing before a court, be it a state court or a federal court, is entitled to due process.

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[4] Except for a very specific categories of litigations such as juvenile court proceedings.

CONCLUSION:

Often great legal scholarship and the ability reconcile complex issues and concepts are needed for this Court to reach a proper decision in a matter brought before it. That is not the case in relation to this petition. All that is needed here is common sense. With that this Court should be able to recognize and clearly state that the due process provision of the 14th Amendment can never be construed or interpreted to allow any state court to finally decide any case, on any basis which effectively denies the losing litigant a lucid explanation as to why he or she lost that case.

The right of the litigants, and particularly the losing litigant, to a lucid explanation of why he or she lost the case must be a foundational element of due process. Absent this process the courts have the potential to act as secret societies or star chamber bodies which are the antithesis of due process. When the court acts as fact finder it must identify the evidence it relied upon to reach those

findings. This lessens the risk of any court imagining or making up the "facts," as has occurred here.

The failure of the Maine Supreme Judicial Court, both in its original decision and in its denial of the motion for reconsideration, to recognize this element of due process demonstrates the need for and the utility of this Court taking action which assures that this element of due process is understood by all state courts to be black letter law in the United States.

For the reasons set forth herein a Writ of Certiorari should be granted.

Respectfully submitted,

Paul C. Nordberg
3 Overhill Drive
Auburn, MA 01501-2406
Tel: (508) 832-6443

Thursday, October 1, 2009

TABLE OF AUTHORITIES

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EXHIBIT 1

Trial Court Decision
October 29, 2008

District Court
Location: York, Maine
Docket No. RE-07-37

Ocean Meadows Condo. Assoc.
Plaintiff

v.

Paul Nordberg and
Debra Nordberg,
Defendants

JUDGMENT
(Title to Real Estate Involved)

In this case Ocean Meadows Condominium Association (Ocean Meadows) seeks foreclosure and money damages claiming that the Nordbergs are in arrears on the Common Expense Assessment relating to Unit #5, which they own at Ocean Meadows. The case was heard at a non-jury trial on October 9, 2008. Ocean Meadows appeared by counsel; Mr. Nordberg appeared ***pro se***; Mrs. Nordberg did not appear.

Following a hearing judgment will be entered in favor of Ocean Meadows.[5]

There is no dispute that the Nordbergs own unit #5 at Ocean Meadows or that they are required to pay a monthly common assessment. Rather than pay on a monthly basis, the Nordbergs let monthly fees accrue for several months and would periodically make a single payment to bring their account current. In April 2007 the Nordbergs had a balance due of $4,070.40. At this point Ocean Meadows referred the account to a lawyer for collection; resulting in a charge for legal fees of $1,725.00.[6] Upon receiving notice of the claim the

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[5] Neither of the Nordbergs filed an answer as required by Rule 7(a) M.R. Civ. P. However, Mr. Nordberg did file a response to Ocean Meadows Motion for Summary Judgment outlining his contention that fees were timely paid. Rather than default Mr. Nordberg, I treat this response as an answer. So far as I can tell, Mrs. Nordberg has not signed any pleadings in this case. She is in default.

[6] The condominium by-laws and state law permit the association to recoup legal fees incurred to collect delinquent common expenses. Suit was filed on April 3, 2007.

Nordbergs sent two checks to Ocean Meadow's lawyer totaling $4,600.00. However this left a balance due of $1,535.90 at May 1, 2007.

Suit was filed on April 3, 2007 and things thereafter became complicated, partly as a result of errors on the part of Ocean Meadow's lawyer and partly as a result of Mr. Nordberg's unfamiliarity with the rules of procedure. A claim that should easily have been resolved became overly contentious.

At trial, Ms. Jackson, bookkeeper for Ocean Meadow's property management company, whom I find to be both competent and credible, reviewed the history of the Nordbergs' account from 2006 to present. She testified and I find that the Nordbergs are in arrears of their Common Expense Assessment in the amount of $757.30.

In his pleadings in response to the earlier motion for summary judgment and his post trial memorandum Mr. Nordberg seeks compensation for "harassment." This request is Denied.

First, it has never been properly pled as a counterclaim. Beyond that. our law does not recognize a cause of action for "harassing" litigation, at least not when the opposing party prevails. To the extent that this is a request for sanctions, it is Denied.

The following judgment will be entered:

1. The parties to this action, their respective counsel, if any, and their addresses are as follows:

Plaintiff: Ocean Meadows Condominium Association
C/O MacKinnon Property Management
PO Box 851
Kennebunk, ME 04043

Counsel: Stephen Y. Hodsdon, Esq.
Hodsdon & Clifford, LLC
56 Portland Road
Kennebunk, ME 04043

Defendants Paul Nordberg
Debra Nordberg
3 Overhill Drive
Auburn, MA 01501

Counsel of Record - None

2. All parties to this action have received notice of the proceedings in accordance with the applicable provisions of the Maine Rules of Civil Procedure.
3. The Defendants have defaulted on their Common Expense Assessment obligation as evidenced by Notice of Lien duly recorded at the York County Registry of Deeds in Book 15060, Page 539.
4. Plaintiff is due for Common Expense Assessments and interest in the amount of $757.30 as of October 9, 2008, and attorney's fees and disbursements of $3,500.00 as of October 9, 2008, for a total of $4,257.30 with additional Common Expense Assessments, interest, and attorney's fees continuing to accrue.
5. The order of priority and amounts of claims with respect to the interests of the Plaintiff and Defendants are as follows:

FIRST: The Plaintiff, by virtue of its Notice of Lien as described in Paragraphs 3 and 4, above, $4,257.30 (inclusive of attorney's fees and disbursements through October 9, 2008) with additional Common Expense Assessments, interest and attorney's fees continuing the accrue.

SECOND: Defendants Paul Nordberg and Debra Nordberg for the surplus.

WHEREFORE, it is hereby **ORDERED AND DECREED** that if Defendants Paul Nordberg and Debra Nordberg, their heirs and assigns, do no pay the Plaintiff the amounts due, together with interests and costs as set forth above, and as hereafter may accrue, within ninety days of the date hereof, Plaintiff shall sell Defendants Paul Nordberg and Debra Nordberg's real estate, as described in Exhibit A of the Complaint and in the Clerk's Certificate dated April 18, 2007 and recorded in the York County Registry of Deeds in Book 1133 at Page 435, free and clear of liens and encumbrances of all parties hereto, pursuant to 14

M.R.S.A, §6321 et seq, and disburse the proceeds of the sale, after deducting the expenses thereof, together with such interest as may be due to the date of sale, in the priorities and amounts set forth above. Any surplus remaining after disbursement of the proceeds of said sale in the above priorities and amounts (and satisfaction of any encumbrances superior to the Plaintiff's lien) shall be paid to Defendants Paul Nordberg and Debra Nordberg.

An execution shall issue against Defendants for any deficiency providing that the statutory requirements are met.

Plaintiff is granted exclusive possession of the real estate mortgaged to it upon expiration of the statutory ninety (90) redemption period and Defendants are Ordered to vacate the real estate if Defendants have not by that date redeemed the real estate in accordance with statutory procedure. A Writ of Possession shall be issued to Plaintiff for possession of said real estate if its not redeemed as aforesaid.

The plaintiff is also awarded a money Judgment against each of the Defendants in the amount of $757.40.

The Plaintiff shall be responsible for recording an attested copy of this Judgment with the York County Registry of Deeds and paying the applicable recording fees.

The Clerk is specifically directed pursuant to M.R. Civ. P. 79(a) to enter this Order on the Civil Docket by notation incorporating it by reference.

IT IS SO ORDERED

Dated: 10/29/08

By: G. Arthur Brennan
Justice, Superior Court
(Sitting for the District Court)

The applicable appeal period has expired with action or the final judgment has been entered after remand following appeal.

Date: _____

_____
Clerk

Exhibit 2

Initial Decision by the Maine Supreme Judicial Court - Sitting as The Law Court June 23, 2009

MAINE SUPREME JUDICIAL COURT
Reporter of Decisions
Decision No. Me. 09-115
Docket No. Yor-08-655

OCEAN MEADOWS CONDOMINIUM ASSOCIATION

v.

PAUL C. NORDBERG, et al

Submitted on Briefs June 4, 2009
Decided June 23, 2009

Panel: SAUFLY, C.J., and ALEXANDER, SILVER, MEAD and GORMAN, JJ.

MEMORANDUM OF DECISION:

Paul C. and Debra L. Nordberg appeal from the judgment of the District court (York, *Brennan, J*) ordering payment of condominium assessments and attorney fees, and foreclosure in the event of non-payment, in favor of the Ocean Meadows Condominium Association.

Contrary to the Nordbergs' contentions, the evidence in the record supports the trial court's findings, made after trial, that the Nordbergs were in arrears in common expense assessments and that the Condominium Association was entitled to reimbursement for reasonable attorney fees in accordance with the declaration establishing the Condominium Association. *See Pratt v. Spaulding*, 2003 ME 56, ¶10, 822 A.2d. 1183, 1185 (on appeal evidence in the trial record viewed most favorably to the trial court's judgment to determine if findings are supported by competent evidence).

The entry is:

Judgment affirmed. Remand to the District Court for assessment of attorney fees for the appeal.

Exhibit #3

Decision dated July 22, 2009 by the State of Maine - Supreme Judicial Court (Sitting at The Law Court) - Denying Reconsideration/Rehearing in Connection with that Court's Initial Decision on Appeal

MAINE SUPREME JUDICIAL COURT
Sitting at The Law Court

Docket No. Yor-08-655
Decision No. Mem. 09-115

OCEAN MEADOWS CONDOMINIUM ASSOCIATION

v.

PAUL C. Nordberg, et al.

ORDER DENYING MOTION TO RECONSIDER

The appellants have moved for reconsideration of this Court's decision dated June 23, 2009. The motion has been reviewed and considered by the panel that decided the original appeal. The motion is DENIED.
Dated: July 22, 2009

For the Court,

Matthew Pollack
Clerk of the Law Court
Pursuant to M.R. App. P. 12A(b)(4)